IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

CRL.A.No. 620 of 1999()

CC.339/1996 of CHIEF JUDITIAL MAGISTRATE COURT, THALASSERY
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APPELLANT: COMPLAINANT

P.P.RANJAN,, SECRETARY,
KANHIRODE KSHEEROLPADAKA
CO- OPERATIVE SOCIETY LTD.,
KANHIRODE.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.P.VISWAMBARAN
SRI.R.O.MUHAMED SHEMEEM

RESPONDENT/ ACCUSED

P.V.RAVEENDRAN, PUTHIYAVEETTIL
KOODALI AMSOM, DESOM,
P.O.KOODALI

BY PUBLIC PROSECUTOR, SRI.AMJAD ALI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.620 of 1999

Dated this the 29th day of June, 2007

JUDGMENT

The appellant is the complainant in C.C.No.339/96 initiated for the offence under Section 138 and 142 of the Negotiable Instruments Act which stands dismissed.

2. The case of the complainant is that the accused/ respondent issued cheque for Rs.29,764.05 to Kanhirode Ksheerolpadaka Co-operative Society Ltd. towards the discharge of liability due towards the account of the milk collected from the society and sold. According to the complainant, the accused promised to pay the amount on or before 12.2.1996 and issued the impugned cheque. The cheque when presented for encashment got bounced on account of insufficiency of amounts in the account of the accused. Statutory notice was sent demanding payment for which the reply was received raising false averments.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 and 2 and Exts. P1 to P7. The defence

examined DWs' 1 and 2 and marked Exts. D1 to D3.

4. The defence of the accused is that the blank cheque issued by him as security when he was employed in the society has been misused by incorporating the sum and putting the date and presenting the same in the bank. In support of the version of the complainant, PW1, the secretary of the society and PW2 one of the directors of the society were examined. PW1 has also proved Ext.P7 minutes book in which Ext. P7(a) is the resolution authorising to initiate proceedings as the cheque received from the accused was dishonoured. The same is dated 16.5.1996. DW1, the manager of the bank, was examined in order to prove the case of the accused that the account was opened as the instance of the President of the Society and the President brought the accused to the bank and got the account opened and a cheque leaf was obtained and it is the same cheque leaf that has been handed over to the society. But DW1 has stated that she joined the bank only in 1.4.1998 and hence she could not depose as to the state of affairs when the account was opened. She has stated that the account was started on 20.10.1995. DW2, the accused has testified that the impugned cheque was issued at the

time when he was employed in the society and the cheque was issued as security for employment.

5. The trial court has found fault with the complainant for not producing the accounts of supply of milk to the accused and also as to the remittance of the amounts due. The court found that it is unlikely that he would have been supplied the milk despite the fact that such a liability existed. It has also been noted by the trial court that the signature in the cheque is in Malayalam whereas the writings is in English and hence, it is unlikely that it was the accused who has filled up the cheque.

6. As pointed out by the counsel for the appellant that the basis of the contention of the accused that the cheque was issued when he was appointed in the society stands totally belied from the facts that evidenced that the accused was salesman for the period from 1.11.1994 to 31.8.1995 which is the undisputed statement of PW1 as well as the version contained in Ext. D3 reply notice produced by the accused himself. It stands proved from the evidence of DW1 that he opened the account in the bank only on 20.10.1995 and hence, I find that the entire case set up by the accused appears to be false. I find that the evidence of PWs' 1

and 2 and Exts. P7(a) resolution of the society duly proved do establish the case set up by the complainant. Even the observation of the court below that the signature in Ext. P1 is in Malayalam is not correct. I find that only the name is written in Malayalam, but the signature is in English. The presumptions under Section 118 and 139 of the Negotiable Instruments Act stands not rebutted. In the circumstances, the decisions of the courts below acquitting the accused is set aside. The accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.30,000/- to the complainant and in default, to undergo simple imprisonment for three months. The accused is granted four months' time to remit the amount of compensation. The accused/respondent shall appear before CJM, Thalassery on 5.11.2007.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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